



**FRANCHISING\***  
Building local businesses,  
one opportunity at a time.

December 1, 2015

Michigan House Commerce & Trade Committee  
State Capitol  
Lansing, Michigan 48909

**RE: SUPPORT SB 492 & 493; HB 5070, 5071, 5072 & 5073**

Dear Chairman Graves and Members of the House Commerce & Trade Committee:

On behalf of the International Franchise Association (IFA), which represents all three segments of the franchise model: franchisees, franchisors, and the supplier industry, I wish to express our strong support of Senate Bills 492 & 493 and House Bills 5070, 5071, 5072 & 5073, which will clarify the relationship between franchisees and franchisors. Similar bills have been examined, passed and signed into law in Texas, Tennessee and Louisiana thus far in 2015.

Franchising is responsible for approximately 260,600 Michigan jobs and over \$21 billion in annual economic impact.

Passage of these bills will allow franchising to continue to grow in Michigan.

Thank you.

Jeff Hanscom

**Jeff Hanscom**

Director, State Government Relations & Public Policy  
1900 K Street, NW, Suite 700  
Washington, DC 20006  
Direct: 202.662.4179 | Cell: 703.407.8448  
[www.franchise.org](http://www.franchise.org)



# MICHIGAN

International Franchise Association

## Fast Facts



# IFA

INTERNATIONAL FRANCHISE ASSOCIATION

## FRANCHISING\*

Building local businesses,  
one opportunity at a time.

### Franchise Brand

*Behind many familiar  
logos and brands . . .*

### Small Business Owners

*. . . are independently-owned  
local businesses*

### Local Economy

## The Franchise Business Model:

- Has created tens of thousands of American small business owners and millions of opportunities for American workers. For many entrepreneurs, franchising offers the "best of both worlds."
- Allows business owners to gain from affiliating with an established brand and the proven processes that made it a success. At the same time, it allows them to maximize both return on their investments and control over their employees and wages.
- Is under attack at the federal level and at the state and local levels as well. A recent National Labor Relations Board ruling could destroy this time-tested business model and undermine decades of regulatory, legal and legislative precedents.

## MICHIGAN BY THE NUMBERS

### 24,458 Locations

Number of franchise establishments in the state

### 260,600 Jobs

Number of people employed  
by franchised businesses

### \$22 Billion Economic Output

Direct amount of money put into  
the economy by franchised businesses

### Examples of Michigan-based franchisors

DUCTZ  
Molly Maid  
Two Men and a Truck  
Little Caesars

Source: Economic Impact Study based on 2007 U.S. Census

## U.S. Franchise Facts

- Locally owned franchises are America's hidden small businesses, with 780,000 establishments across the country.
- Franchising directly contributes \$890 billion in economic output, accounting for roughly 3% of private sector U.S. GDP.
- Franchising is a job-creating mechanism that not only offers opportunities to entrepreneurs but also supports more than 8.9 million direct jobs nationwide.

January 2015 forecast, IHS Economics

## Franchise Businesses: Good for America and Good for Local Communities

The International Franchise Association is the world's oldest and largest organization representing franchising worldwide. Celebrating 50 years of excellence, education and advocacy, IFA works to protect, enhance and promote franchising through its government relations and public policy, media relations and educational programs.

**International Franchise Association**

1900 K Street NW, Suite 700 | Washington, DC 20006 | Phone 202-628-8000 • Fax 202-628-0812

**franchise.org**

## **Michigan bills SB 492 & 493 would clarify and provide certainty for both Franchisees and Franchisors**

Due to recent and unforeseen NLRB actions, as detailed below, this legislation would provide a great deal of certainty for both Franchisees and Franchisors.

The bills clarify that for the purposes of the chapter in existing law regarding employment discrimination, the payment of wages, the minimum wage, professional employer organizations, workers' compensation and workers' health and safety, a franchisor is not considered to be an employer of a franchisee or a franchisee's employees.

## **New "Joint Employer" Standard Would Hurt Small Businesses Everywhere**

*The National Labor Relations Board wants to demote thousands of America's entrepreneurs to assistant managers.*

*It's time to push back against this government overreach into local businesses and preserve the joint employer standard.*

The NLRB recently ruled in favor of a new joint employer standard under the National Labor Relations Act (NLRA) in the pending case, *Browning-Ferris Industries*. This ruling has enormous consequences for the relationship between franchisees and franchisors, and franchisors could be ruled to be the joint employer of a franchisee's workers, and therefore liable for unfair labor practices or other illegal acts committed by a franchisee.

The NLRA's joint employer standard is intended to protect businesses from unnecessary involvement in labor negotiations or fights involving workplaces in which they do not maintain any direct control. The Board's traditional standard deems businesses joint employers only when they share direct and immediate control over essential terms and conditions of employment including hiring, firing, discipline, supervision and direction. However, this new standard proposes an amorphous indirect control standard that leads to uncertainty for franchisees and franchisors. Almost any economic or contractual relationship could trigger a finding of joint employer status under this newly proposed standard.

### **See the expected effects on businesses after the Browning-Ferris ruling:**

- Brand companies will be required to exercise more control over small businesses with which they contract, in order to limit their NLRA liability.
- Local business owners would forfeit operational control of the stores, clubs, inns or restaurants they built.
- Enterprise value of thousands of franchises and small businesses may decrease because of the decreased operational control and future franchise development is jeopardized as brands expand using a corporate ownership model
- Nearly all contractual business relationships will be called into question and NLRB rulings will conflict federal and state courts which continue to apply the well-understood direct control standard.

Despite the fact that only the full Board can change the NLRB's joint employment standard, the NLRB's General Counsel, Richard F. Griffin, Jr., is already interpreting the law as it sees fit and ignoring the current standards established in the NLRB's *Lareco Transportation* (1984) and *Southland Corporation* (1968) decisions. He is pursuing complaints against numerous local McDonald's franchisee owners, alleging that McDonald's USA is their joint employer.

### **Due to the NLRB's new joint employer standard, there could be:**

- Fewer local businesses: If control is taken away from entrepreneurs, they will not open new businesses in their local areas. Large brands will open corporate locations instead. As a result, America's Main Street will lose the small businesses that independent owners create in their local communities.
- Fewer jobs: According to the Small Business Administration, local businesses in the 20-499 employee range have created 60 percent of the net new jobs since the end of the recession (from mid-2009 to mid-2013). If entrepreneurs are not investing in local businesses, then jobs will disappear.

Bottom line: The recent joint employer change by the NLRB would make it far harder for independent business owners to build and operate effective, profitable local businesses and that will lead to large corporations taking Main Street.

**CHAMBER OF COMMERCE**  
**OF THE**  
**UNITED STATES OF AMERICA**

GLENN S. SPENCER  
VICE PRESIDENT  
WORKFORCE FREEDOM INITIATIVE

1615 H STREET, N.W.  
WASHINGTON, D.C. 20062-2000  
DIRECT LINE 202/463-5769  
GSPENCER@USCHAMBER.COM

December 1, 2015

The Honorable Joe Graves, Chairman  
P.O. Box 30036  
Lansing, MI 48909-7536

Dear Chairman Graves:

Thank you for considering SB 492 and SB 493 in the House Commerce Committee. The U.S. Chamber of Commerce's Workforce Freedom initiative strongly supports these bills as a means to protect Michigan's economic climate. They will help preserve the independence and investment of thousands of small businesses operating as franchises in Michigan. These local franchise business owners provide employment for more than 260,000 workers in Michigan, and have an annual economic impact of over \$21 billion.

These bills are necessary because the National Labor Relations Board in Washington, DC, recently issued a new joint-employer standard, one that is both broad in its coverage and vague in its application. This new standard could easily make local franchise business owners joint employers with brand name companies, compromising the independence of their businesses and undermining the franchise model that has promoted entrepreneurship, flexibility, competitiveness and growth. It would essentially make businesses liable for workplaces they don't control, and workers they don't employ.

While the National Labor Relations Act has broad preemption authority, SB 492 and SB493 will protect Michigan's franchise businesses by codifying the prior joint-employer standard for state level enforcement actions. Some states, notably California, have already begun pursuing expanded liability under state law along the lines of the new joint-employer standard and these bills will ensure that Michigan does not go down that path.

The Workforce Freedom Initiative supports SB 492 and SB 493 and recommends their passage to protect the economic climate and local franchise businesses of Michigan.

Sincerely,

Glenn Spencer  
Vice President  
Workforce Freedom Initiative, U.S. Chamber of Commerce